

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-318-C - ORDER NO. 97-710
AUGUST 19, 1997

IN RE: THE INTERIM LOCAL EXCHANGE) ORDER DENYING PETITIONS
CARRIER FUND) FOR REHEARING OR
RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") upon the filing of three Petitions for Rehearing, Reconsideration or Clarification of our Order No. 96-882 (the "Order") issued on December 30, 1996. Order No. 96-882 provided our ruling on the Interim Local Exchange Carrier Fund ("the Interim LEC Fund" or "the Fund"), the establishment of which was mandated by Act No. 354, Amendment to S.C. Code Ann. §58-9-280 (Supp. 1996). The Act states that the Commission was to establish, no later than December 31, 1996, the Interim LEC Fund which we did in Order No. 96-882.

A Hearing was held on this matter before the Commission on December 16 and 17, 1996. The following Parties of Record filed Petitions for Rehearing, Reconsideration or Clarification of this Order in a timely manner: AT&T Communications of the Southern States, Inc. ("AT&T"), the South Carolina Public Communications Association ("SCPCA"), and the Consumer Advocate for the State of South Carolina ("the Consumer Advocate"). For the reasons stated below, the requests of these Petitions are all hereby denied.

I. PETITION OF AT&T

AT&T first requests in its Petition that this Commission "issue as a part of its Order a Plan complete in its terms and conditions rather than leaving it to the various Parties to...interpret" We deny this portion of AT&T's Petition because we feel that the Order, as issued, provides for all Parties and the Commission a complete Plan, and therefore no further Order or amendment to an Order is necessary. The original Order provides a thorough discussion of the Fund and its administration, and the thirty-three page attachment to the Order provides the calculations of rates which shall be implemented pursuant to the Fund.

AT&T next requests that the Exhibit No. 1 of the testimony of James M. Mertz be adopted in place of the current Plan that the Commission has approved. Mr. Mertz's exhibit amends the Plan that the South Carolina Telephone Coalition ("the Coalition") originally filed in this Docket and which the Commission subsequently adopted with modifications as the Plan. We stand by our original decision adopting the Coalition's Plan and do not adopt the exhibit of Mr. Mertz. Our current Plan appropriately complies with the requirements of the Act.

As a third item, AT&T requests that the Commission clarify its provisions addressing the calculation, billing, collection, and distribution of the Fund. AT&T cites on page two of its Petition its interpretation of the provisions of the Order. The original Order provides a thorough explanation of the calculation, billing, collection and distribution of the fund and no further

clarification is needed. AT&T next requests that the Commission reconsider and clarify its Order regarding the construction of Paragraph 3(d) of the Order regarding the determination of Contributors to the Fund. The Order states that "Staff shall determine the Contributors to the Fund consistent with the language of Act No. 354." We feel that no further clarification of our Order is necessary at this time. We have delegated to Staff the responsibility of determining all Contributors to the Fund pursuant to the Plan in compliance with the Act. Any subsequent concern Staff may have in identifying the Contributors or administering the Plan may be brought before this Commission for consideration.

Further, the Petition of AT&T states that this Commission should reconsider its Order regarding the annual quantity of minutes of use utilized for calculation of Fund contributions. We held in Order No. 96-882 that "the Fund shall be initiated and adjusted annually based upon actual minutes of use for the 12 months ending December 31 as soon as possible." We feel that utilizing the previous calendar year's minutes of use will accurately reflect the data necessary to annualize the use. We expect that Staff will adjust the minutes of use appropriately in a timely fashion so that Contributors to the Fund and Recipients of the Fund's contributions will all benefit equitably.

AT&T further asks that the Commission eliminate the growth factor provided for in Paragraph 3 (g) and (h) of the Order. AT&T states that we have erroneously provided a "windfall" to the participating LECs. In fact, we do not believe that the growth

factor erroneously benefits any Party. The growth factor will account for the increasing loss that the LECs will experience in coming years as their customer bases expand. Therefore, we feel that the Fund should account for the growth of the LECs.

We do not agree with AT&T's assertion in its next request that the Plan "would permit the recovery of reduced revenues resulting from the elimination of the charges from Touch-tone services." In Attachment A to our Order, we factored in all charges to the residential and business customers that these customers pay, and we then calculated the increase or decrease over a 5-year period based upon those charges. We feel that our calculations indeed offset revenue reductions resulting from reductions in toll-switched access rates and/or interconnection rates. Our calculations are not designed to provide the LEC's Touch-tone recoveries.

We also deny AT&T's last request that the Commission reconsider the Order to extend the imputation requirement to LEC business services. We feel that the Plan as currently written is in compliance with the Act. We believe the treatment of residential services versus that of business services is appropriate.

II. THE PETITION OF THE CONSUMER ADVOCATE

In its Petition, the Consumer Advocate reiterates its objections to the Commission's proceedings regarding the Interim LEC Fund. The Consumer Advocate originally raised its concerns in a Motion to Dismiss which was heard at the beginning of the Hearing. The Consumer Advocate states that the Commission has

violated S.C. Ann. §58-9-520, 58-9-530, 58-9-540, and Reg. 103-834.

We stand by our original ruling and hold that this proceeding was not a "rate case" as contemplated by the above-referenced statutes. The Act mandated actions by the Commission designed for a limited, specific purpose. This is a specialized statute enacted for a specific purpose. We do not feel that the Commission violated any of the referenced code sections.

The Consumer Advocate goes on to state that we implied in our Order No. 96-882 that S.C. Code Ann. §58-9-280(L) requires the Commission to allow the LECs to raise their local exchange rates. The statute indeed instructs the Commission that we "shall allow" such adjustments not that we are required to allow adjustments. In fact, the Order complies with the law in that this Commission allowed "adjustment of other rates not to exceed statewide average rates, weighted by the number of access liens..." We utilized our discretion as to how the Fund should be implemented in connection with the rates to be charged by the LECs in this State and allowed appropriate adjustments. The establishment of this Fund and the adjustments of rates pursuant to the Act directing the establishment of the Fund are specific actions mandated by a specific statute. We are not required to proceed under the "rate case" statutes as advocated by the Consumer Advocate. We remind all Parties that we instituted both rate increases and rate decreases, which are both rate adjustments, in the establishment of this Fund.

The Consumer Advocate next asserts that the evidence of

record does not support the established statewide averaged rate of \$14.35. We in fact believe that \$14.35 is the statewide average rate for residential basic local service weighted by the number of access lines. This number is calculated by a summation of the rates on file with the Commission and a matter of simple division. All such information is on file with the Commission, and the calculation was achieved by the Commission Staff. No Party presented evidence to dispute this number. We have appropriately taken notice of this number as calculated by our own Staff.

Lastly, we deny the Consumer Advocate's request of a Stay of Order No. 96-882, a portion of which permits the LECs to implement any local exchange service rate increases and to freeze those rates as it has the rates of the COCOT providers. We believe that our Plan complies with the Act and, therefore, a stay of the Plan would be inappropriate since the legislature mandated that the implementation of the Plan be accomplished by year-end 1996.

III. THE PETITION OF THE SOUTH CAROLINA PUBLIC COMMUNICATIONS ASSOCIATION

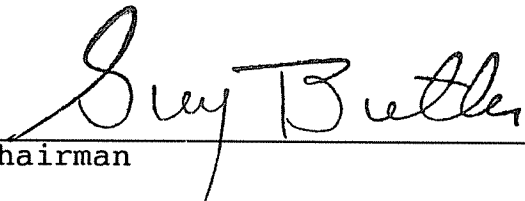
In its Petition, the SCPCA asserts that this Commission erred in not setting all PTAS rates equal to each LECs rate for flat-rated single line business services. The SCPCA requests the alternative rates for PTAS in lieu of the generic proceeding that will be necessary to examine each LECs cost of PTASs. We feel that, on an interim basis, our decision in Order No. 96-882 is correct. Many issues for consideration regarding COCOTs and their rates shall be considered this year in a comprehensive proceeding before this Commission. We feel that these issues are important

and require special consideration by the Commission instead of sweeping treatment in the Interim LEC Fund proceeding. Therefore, we deny the request of the SCPCA.


For the above reasons, the Petitions for Rehearing, Reconsideration or Clarification are hereby denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy
Executive Director
(SEAL)